



HUMAN RIGHTS · We're all Responsible

GUIDELINES ON THE APPLICATION
OF
THE INDIVIDUAL'S RIGHTS PROTECTION ACT
TO
A PERSON WITH A PHYSICAL CHARACTERISTIC
IN
EMPLOYMENT



Room 902, 10608 99th Avenue, Edmonton, Alberta, Canada T5K 0G2 403/427-3116

April, 1984

The Alberta Human Rights Commission developed the enclosed guidelines in response to public demands:

1. to provide a clearer interpretation and understanding of the application of the term "physical characteristics," as defined in the Individual's Rights Protection Act, relating to employment, tenancy and services customarily available to the public,
2. to provide a set of clearly-enunciated principles and guidelines for those persons affected by the provisions of the Individual's Rights Protection Act.

One of the primary purposes in creating such guidelines was to reduce the propensity for complaints by creating a clearer understanding of what is reasonably expected of a service provider, landlord or employer in meeting the needs of a person with a physical disability.

A second purpose was to address the responsibilities of all concerned parties in employment, tenancy and service situations.

More than 1,000 copies of the proposed guidelines and response forms were distributed to businesses and to organizations which deal with the physically disabled. The Commission also advertised in weekly newspapers and sought public participation and response.

To the hundreds who responded, the Commission would very much like to express its appreciation. The views expressed, both positive and negative, served as a basis for discussion and thorough review of the proposed guidelines by the Commission. This review has resulted in the finalization and approval of these guidelines.

Please feel free to contact the Commission if questions arise.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marlene Antonio".

Marlene Antonio (Mrs.)
Chairman



"...it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin..."

...From the Preamble to The
Individual's Rights Protection Act.

Alberta Human Rights Commission
April, 1984

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A. INTRODUCTION

The Individual's Rights Protection Act (I.R.P.A.) of Alberta was enacted in 1972 and amended on September 1, 1980 to include physical characteristics as a protected class. This Act is the anti-discrimination law of the province.

The I.R.P.A. applies to all provincial government departments and agencies as well as all businesses and industries under provincial jurisdiction in all facets of employment policies, practices and referrals.

The Alberta Human Rights Commission, established in 1973, administers the I.R.P.A. The Commission has a two-fold function of education and enforcement.

Among other provisions, the I.R.P.A. makes it a discriminatory act for an employer to deny an individual the opportunity to apply for employment, obtain employment, or be employed, on the basis of his/her physical characteristics.

Specifically, sections 7 and 8 of the Act state that:

7(1) No employer or person acting on behalf of an employer shall

- a) refuse to employ or refuse to continue to employ any person,
or**
- b) discriminate against any person with regard to employment or any term or condition of employment,**

because of the race, religious beliefs, colour, sex, physical characteristics, marital status, age, ancestry or place of origin of that person or of any other person.

8(1) No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or

oral inquiry of an applicant

- a) that expresses either directly or indirectly any limitation, specification or preference as to the race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin of any person, or
- b) that requires an applicant to furnish any information concerning race, religious beliefs, colour, sex, physical characteristics, ancestry or place of origin.¹

The purpose of this paper is to set out guidelines pursuant to section 7 and 8 of the I.R.P.A., with respect to physical characteristics. These guidelines have been written to provide the public with better understanding of this aspect of the I.R.P.A.

The Alberta Human Rights Commission respects the basic rights of an employer to make all decisions with regards to the management of any employment environment while recognizing the fundamental principles of human rights as defined in the Individual's Rights Protection Act.

This paper provides definitions which aid in reading the guidelines, followed by a discussion of the basic principle on which the guidelines are based. The guidelines are then presented, followed by a discussion of the subject areas to which they apply.

* * * *

B. DEFINITIONS

The following definitions are provided as an aid in reading these guidelines:

1. Physical Characteristics is defined in the I.R.P.A. as follows:

¹ Individual's Rights Protection Act, Chapter 1-2, RSA, 1980.

"...any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, wheelchair or other remedial appliance or device".

For the purpose of this paper only, the term functional impairment will take on the same meaning as physical characteristics as defined in the Act.

2. Employment Practices

For the purpose of this paper, this term refers to all aspects of employment including advertising positions, interviewing, hiring, promotion, transfers, termination and all other terms and conditions of employment.

3. Equal Treatment

To be effective, there should exist equal opportunity to participate in all employment practices. In order to ensure equal opportunity for a person with a functional impairment, varied employment practices may have to be established.

EXAMPLE:

Fatigue is the primary symptom in persons with Multiple Sclerosis. If a person with Multiple Sclerosis seeks employment in a florist's shop, for example, consideration should be given to allowing the applicant/employee to sit, instead of stand, while working.

Further elaboration is found under Reasonable Accommodation (page 5) and Requirements and Qualification For Employment (page 8).

C. REASONABLE ACCOMMODATION - THE UNDERLYING PRINCIPLE FOR GUIDELINES ON THE APPLICATION OF THE INDIVIDUAL'S RIGHTS PROTECTION ACT TO A PERSON WITH A FUNCTIONAL IMPAIRMENT IN EMPLOYMENT

The preamble to the I.R.P.A. states that "it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin..."²

In keeping with the above, and sections 7 and 8 of the I.R.P.A., these guidelines are based on a fundamental principle accepted by the Alberta Human Rights Commission that a person with a functional impairment should be accommodated, where possible, within the environment enjoyed by persons without a functional impairment. Further, where possible, employment practices should be designed so as not to exclude a person with a functional impairment. This is the principle of reasonable accommodation.

As each situation is unique, it will be necessary to evaluate each individual set of circumstances with regard to the practice of reasonable accommodation.

When the Commission is called upon to investigate a complaint, the Commission in co-operation with the affected parties, will examine among others, the following criteria to determine whether reasonable accommodation is feasible:

1. availability of alternatives,
2. financial burden,
3. safety,
4. economy and efficiency,

² Individual's Rights Protection Act, Chapter 1 - 2 , RSA, 1980.

5. work force deployment,
6. other relevant legislation.

If circumstances dictate, an outside expert opinion may be sought by the Commission regarding the situation.

* * * *

REASONABLE ACCOMMODATION IN EMPLOYMENT

REASONABLE ACCOMMODATION MEANS THE ADAPTATION OF EMPLOYMENT PRACTICES TO ENABLE THE PARTICIPATION OF ANY PERSON WHO HAS THE CAPACITY AND ABILITY TO PARTICIPATE.

TO "REASONABLY ACCOMMODATE" MAY REQUIRE PHYSICAL ALTERATIONS, USE OF PROTECTIVE DEVICES, PROVISION AND USE OF TECHNICAL DEVICES, OR TECHNICAL APPARATUS.

The I.R.P.A. provides protection to all individuals, within the jurisdiction of the Act, against discriminatory employment practices. Employers should be aware of the need to provide reasonable accommodation in employment to a person with a functional impairment. Furthermore, it is not expected that an employer provide employment or continue to employ an individual who, because of a functional impairment, increases the probability of health or safety hazards to employees and/or the public. There is, however, an onus on the employer to demonstrate that the individual's impairment endangers employees and/or the public or substantially increases the risk of damage to the employer's property.

Within any general category of injury or disability, individuals have widely-varying degrees of disability or risk of disability. Employment decisions should be based on the capacities and abilities of the individual job applicant.

EXAMPLE

A person with a hearing disability might be safely accommodated around machinery if a visual warning (flashing light) was installed in addition to, or in place of, the standard audible warning (buzzer).

In an industry where an employee often works alone in isolated locations, a person with a limiting functional impairment may be able to adequately carry out the routine duties of work. However, in an emergency situation, such as at a gas compressor station where volatile substances under high pressure are present, such handicaps as a hearing impairment, mobility impairment or a back injury could slow down response time and contribute to hazards to the employee, the installation and the environment.

* * * *

D. GUIDELINES

(The following guidelines are subject to the principle of reasonable accommodation.)

I. PHYSICAL ACCESSIBILITY TO EMPLOYMENT

A PERSON WITH A FUNCTIONAL IMPAIRMENT SHOULD NOT BE DENIED ACCESS TO EMPLOYMENT ON THE BASIS OF HIS/HER FUNCTIONAL IMPAIRMENT.

Recognizing the concept of reasonable accommodation, the existence of a functional impairment is not, in itself, an acceptable basis for denying an individual access to employment.

EXAMPLE

A person in a wheelchair should not be denied the opportunity to compete for or to perform a job simply because the individual cannot climb two or three steps. The installation of a ramp to facilitate entry to the work place would be considered reasonable accommodation.

Should an employer provide parking for the staff, a parking

spot near the point of entry would also grant the individual easier accessibility.

II. REQUIREMENTS AND QUALIFICATIONS FOR EMPLOYMENT

THE SAME ESSENTIAL REQUIREMENTS AND QUALIFICATIONS MUST APPLY EQUALLY TO A PERSON WITH A FUNCTIONAL IMPAIRMENT AS APPLY TO ALL OTHER PERSONS.

The following employment practices should be evaluated to ensure that there is equal opportunity provided:

A. Position Requirements - the employer should clearly link occupational requirements to specific physical abilities, essential skills, and working conditions. It is suggested that the requirements be identified as:

1. it enables the employer to analyze and understand the occupational components,
2. it provides a set of criteria by which both the applicant and the employer may assess an individual's capabilities to perform

EXAMPLE

If the essential occupation requirements include the ability to manually load or unload heavy objects from a truck, and an applicant has a back injury both the applicant and employer would probably consider the affect of the injury on the applicant's ability to perform safely.

Similarly if the job requirements requires that a person be able to operate a forklift safely - then both parties would probably consider whether an applicant who suffered from seizures would be able to satisfy that requirement.

B. Application Forms - questions relative to physical characteristics should not be asked as it is probable that this would result in the screening out of a

person with a functional impairment.

However, each applicant should recognize that he/she bears a responsibility to realistically assess his/her own abilities as they relate to the physical requirements of the job.

- C. Job Interviews - the employer has a responsibility to make a fair and realistic assessment to match abilities with job requirements and not to overstate the physical requirements of the job. The employee must also accept the responsibility to make a fair and realistic assessment and to disclose any reason why he/she may not meet the requirements of the job.

An opportunity to realistically assess abilities and job requirements often does not arise until the interview stage.

During an interview, questions relating to physical abilities are appropriate in the context of specific job functions. When this approach is used it should not be necessary to make specific inquiries about medical conditions or past injuries; the focus of the interview is then on job related abilities rather than disabilities.

- D. Employment Related Testing - may be carried out as an assessment of a person's physical ability, skills, capabilities, knowledge or experience. It is important to note that tests for employment purposes should be carefully selected and monitored as valid predictors of acceptable performance. Job-related tests and selection procedures have a place in the employment process. However, the use of tests which

are not job-related may adversely affect the employment opportunities of a functionally impaired individual.

- E. Employment-Related Medical - it is not a contravention of the I.R.P.A. for an employer to offer employment, with the understanding that the offer is contingent upon a job-related medical assessment.

Job-offer related medicals, if required, should not be limited only to those who possess a functional impairment. The philosophy of job-related medicals is that they be applied equally to all successful applicants. If medical examinations are required only of those with a real or perceived impairment, this would constitute a discriminatory hiring practice. This may result in some persons being subjected to more stringent requirements than others not so identified.

All employers, of course, establish eligibility requirements and qualifications which must be met by all individuals who wish to apply for and obtain employment. For the purpose of the I.R.P.A., such requirements and qualifications should be reasonable and related to the position. Requirements that exclude a person from applying for and/or obtaining a position because, for example, he/she is a member of a group, rather than because he/she does not have the qualifications, are unacceptable. An employer should consider methods of reasonably accommodating a person with a functional impairment.

With the adoption of these practices an employer may well preclude complaints of alleged discrimination based on physical characteristics.

III. HEALTH OR SAFETY

IF, FOR HEALTH OR SAFETY REASONS, AN INDIVIDUAL WITH A FUNCTIONAL IMPAIRMENT IS REFUSED EMPLOYMENT, OR HIS/HER EMPLOYMENT IS TERMINATED, IT MUST BE BECAUSE OF AN INCREASED HAZARD TO THE HEALTH OR SAFETY OF ANY EMPLOYEE OR THE PUBLIC.

If an individual otherwise meets the requirements and qualifications for a job but is refused for reasons of health or safety, the employer must be able to prove that because of the individual's impairment, there will be a greater than normal health or safety hazard.

EXAMPLE

An individual who is subject to epileptic seizures, if employed on a scaffold, could be a safety hazard to himself, fellow employees and the public. Should he suffer a seizure, his own life may be endangered as well as the lives of would-be rescuers. Additionally, there would be a danger that any tools with which he was working could drop and injure persons walking below.

* * * *

E. CONCLUSION

GUIDELINES ON THE APPLICATION OF THE INDIVIDUAL'S RIGHTS PROTECTION ACT TO A PERSON WITH A PHYSICAL CHARACTERISTIC IN EMPLOYMENT have been developed to provide the public with assistance in complying with sections 7 and 8 of the Individual's Rights Protection Act.

The guidelines are based on the fundamental principle accepted by the Alberta Human Rights Commission, that persons with a functional impairment should be accommodated, where possible, within the environment enjoyed by other persons. This is the principle of reasonable accommodation. A working definition of

reasonable accommodation has been provided. Further, having a functional impairment does not alter the rights and responsibilities of an individual as a member of society. Finally, employment practices should not be designed or implemented to exclude a qualified person with a functional impairment.

The guidelines address three major areas: physical accessibility to employment; requirements and qualifications for employment; and health or safety.

* * * *

F. SUMMARY OF GUIDELINES

I. PHYSICAL ACCESSIBILITY TO EMPLOYMENT

A PERSON WITH A FUNCTIONAL IMPAIRMENT SHOULD NOT BE DENIED ACCESS TO EMPLOYMENT ON THE BASIS OF HIS/HER FUNCTIONAL IMPAIRMENT.

II. REQUIREMENTS AND QUALIFICATIONS FOR EMPLOYMENT

THE SAME ESSENTIAL REQUIREMENTS AND QUALIFICATIONS MUST APPLY EQUALLY TO A PERSON WITH A FUNCTIONAL IMPAIRMENT AS APPLY TO ALL OTHER PERSONS.

III. HEALTH OR SAFETY

IF, FOR HEALTH OR SAFETY REASONS, AN INDIVIDUAL WITH A FUNCTIONAL IMPAIRMENT IS REFUSED EMPLOYMENT, OR HIS/HER EMPLOYMENT IS TERMINATED, IT MUST BE BECAUSE OF AN INCREASED HAZARD TO THE HEALTH OR SAFETY OF ANY EMPLOYEE OR THE PUBLIC.

For further copies or additional information contact:

Alberta Human Rights Commission

Regional Office (S)
1333 - 8th Street S.W.
Calgary, Alberta
T2R 1M6
(403) 297-6571

Regional Office (N)
Room 501, 10053 - 111 Street
Edmonton, Alberta
T5K 2H8
(403) 427-7661

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